

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 49

(Chair, Environment and Transportation Committee)(By
 Request - Departmental - Environment)

Environment and Transportation

Education, Energy, and the Environment

Environment - Building Energy Performance Standards - Alterations and Analysis

This departmental bill makes various changes to provisions related to the building energy performance standards (BEPS) for covered buildings that the Maryland Department of the Environment (MDE) is charged with administering pursuant to the Climate Solutions Now Act (CSNA) (Chapter 38 of 2022). Among other things, the BEPS regulations that MDE must establish pursuant to current law must include additional special provisions, exceptions, and exemptions and an annual reporting fee. In addition, among other changes, the bill alters the definition of “covered building” and requires MDE to (1) certify a county BEPS program under specified conditions and (2) conduct a cost-benefit analysis and develop recommendations regarding BEPS policy options and submit its analysis and recommendations to the Governor and the General Assembly by December 31, 2026.

Fiscal Summary

State Effect: Special fund revenues increase by \$690,000 in FY 2026 from fees; out-years reflect fee increases due to inflation. MDE expenditures increase by \$1,033,800 in FY 2026; while the FY 2026 budget includes \$1.0 million in special funds for MDE contingent upon the enactment of legislation to establish a BEPS annual reporting fee, which this bill effectuates, special fund revenues are not sufficient to cover MDE’s costs, so general fund expenditures increase by \$343,800 in FY 2026 only. State expenditures (multiple funds) increase to pay the annual reporting fee beginning in FY 2026.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
SF Revenue	\$690,000	\$703,800	\$717,900	\$732,200	\$746,900
GF Expenditure	\$343,800	\$0	\$0	\$0	\$0
SF Expenditure	\$690,000	\$484,700	\$506,200	\$528,800	\$551,300
Exp. (Mult. Funds)	-	-	-	-	-
Net Effect	(-)	-/(-)	-/(-)	-/(-)	-/(-)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures increase to pay the annual reporting fee beginning in FY 2026. Montgomery County is the only county expected to have a county BEPS program certified by MDE under the bill; effects on the county are anticipated to be primarily operational, as discussed below. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment due to the amendments, as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law:

Climate Solutions Now Act

In general: CSNA made broad changes to the State's approach to reducing statewide greenhouse gas (GHG) emissions and addressing climate change. Among other things, CSNA accelerated previous statewide GHG emissions reductions targets originally established under the Greenhouse Gas Emissions Reduction Act by requiring the State to develop plans, adopt regulations, and implement programs to (1) reduce GHG emissions by 60% from 2006 levels by 2031 and (2) achieve net-zero statewide GHG emissions by 2045.

Building Energy Performance Standards: To accomplish these goals, among other things, *under current law and the bill*, CSNA requires MDE to develop BEPS for covered buildings that achieve (1) a 20% reduction in net direct GHG emissions by January 1, 2030, as compared with 2025 levels for average buildings of similar construction and (2) net-zero direct GHG emissions by January 1, 2040. To facilitate the development of these BEPS, MDE must require owners of covered buildings to measure and report direct emissions data to the department each year beginning in 2025. The provision requiring MDE to set a standard that achieves net-zero direct GHG emissions for covered buildings terminates December 31, 2029.

Under current law and the bill, “covered building” means a building that (1) has a gross floor area of 35,000 square feet or more, excluding the parking garage, and (2) is a commercial or multifamily residential building in the State or is owned by the State. *Under current law*, the term does not include (1) a building designated as a historic property under federal, State, or local law; (2) a public or nonpublic elementary or secondary school building; (3) a manufacturing building; or (4) an agricultural building. *Under the bill*,

“covered building” also does not include a hospital. In addition, the bill establishes a definition for “manufacturing building,” which means a facility in which “manufacturing,” as defined in current law, takes place.

Implementing Regulations: CSNA required MDE to adopt regulations to implement BEPS by June 1, 2023. MDE initiated the regulatory promulgation process to implement the required BEPS regulations in December 2023, but ultimately withdrew the regulations in December 2024. MDE finalized a second round of BEPS regulations that took effect December 23, 2024. The regulations establish BEPS and related benchmarking and reporting requirements under COMAR 26.28. However, the regulations do not include energy use intensity () standards. Under the regulations, beginning in calendar 2025, owners of covered buildings are required to report benchmarking information for the previous calendar year by June 1.

The fiscal 2025 budget as enacted included language restricting funding for the final development and submission of EUI targets and standards regulations until MDE submits, among other things, a report on EUI costs and alternatives to EUI for meeting GHG targets.

Under current law, among other requirements, the regulations must meet several specified requirements, including that the regulations must include (1) EUI targets by building type and (2) special provisions or exceptions to account for building age, regional differences, the unique needs of particular building or occupancy types (as specified), and the use of district energy systems and biofuels by covered buildings. *Under the bill*, in addition to those special provisions or exceptions, the regulations must include special provisions or exceptions to account for (1) crediting the generation of on-site renewable energy by covered buildings toward their EUI targets; (2) crediting the GHG reduction impact of the on-site use of biomethane; and (3) excluding the energy use and GHG emissions related to the production of steam for sterilization in – and the generation of emergency backup power at – specified facilities, laboratories, critical infrastructure, and buildings.

Under current law and the bill, the regulations must also consider the needs of covered building owners who (1) are not responsible for the design, modification, fixtures, or equipment of commercial tenants; (2) do not have access or control over building energy systems that are used or controlled by commercial tenants; or (3) own buildings occupied by commercial tenants who are responsible for all maintenance of and repairs to the buildings.

Under the bill, the regulations also must exempt from EUI targets, a covered building that contains an area designed, built, and operated as a permanent sensitive compartmented information facility and is operated by an agency or contractor of the U.S. General Services Administration, the U.S. Department of Defense, the National Security Agency, the U.S. Department of Homeland Security, any other U.S. intelligence agency, or the State.

Additionally, the regulations must exempt an owner of such a covered building from EUI reporting requirements if, in circumstances where tenant authorization is required, the tenant or occupant does not provide energy use information to the owner of the covered building due to concerns about the confidentiality of the building's secure area.

Under current law and the bill, the regulations must also include an alternative compliance pathway (ACP) allowing an owner of a covered building to pay a fee for GHG emissions attributable to the building's failure to meet direct GHG emissions reduction targets.

Finally, *under the bill*, the regulations must include an annual reporting fee of \$100 per covered building, adjusted for inflation, to cover the administrative costs of the BEPS program.

Certification of a County Building Energy Performance Standards Program

Under the bill, MDE must certify a BEPS program adopted by a county administering a BEPS program by March 1, 2025, and waive the requirement for covered buildings in the county to comply with the statewide program. A county administering an MDE-certified BEPS program is authorized to take appropriate actions to enforce the county standards, including establishing ACPs for compliance and imposing and collecting ACP fees and penalties up to the same amount and in the same manner allowed by MDE, as specified.

A county that is administering an MDE-certified BEPS program is not precluded from adopting BEPS for buildings that are not covered buildings under the statewide program or modifying an adopted BEPS program.

Required Cost-benefit Analysis

Under the bill, MDE must conduct an analysis of the potential costs and benefits of BEPS policy options featuring direct emissions reduction requirements, EUI requirements, and a combination of both requirements that describes, for each scenario, the following: (1) program design considerations; (2) GHG emissions reduction potential; (3) direct emissions reduction potential; (4) overall energy savings potential; (5) peak energy savings potential; (6) implementation costs to building owners and MDE; (7) lifecycle costs of the building and equipment and cost-effectiveness for building owners; and (8) program implementation cost and complexity. In conducting the analysis, MDE must (1) identify specified policy considerations and recommendations and (2) calculate building benchmarks based on benchmarking data reported to MDE by covered building owners pursuant to current law. MDE must submit the analysis and recommendations to the Governor and the General Assembly by December 31, 2026.

Background: MDE advises that the department plans to adopt EUI standards in regulations following the submission of the required report to the General Assembly and the calculation of EUI standards based on data reported to MDE in 2026. MDE notes that EUI standards are important for promoting efficient electrification to enable Maryland's clean energy transition, minimize electricity grid impacts, and achieve Maryland's goal of net-zero GHG emissions by 2045.

MDE advises that it needs additional revenue to cover its administrative costs to implement the BEPS program (including costs to purchase software and hire staff to provide technical support to building owners). The fee revenue generated by the bill assists in covering at least some of those costs.

The Montgomery County Council adopted county BEPS in February 2025. The Montgomery County BEPS cover most commercial and multifamily buildings that are at least 25,000 gross square feet. Covered buildings are grouped by size and type. The grouping dictates when buildings begin benchmarking, their baseline periods, and the interim and final performance standard deadlines. The county has information about the Montgomery County BEPS on its [website](#).

State/Local Fiscal Effect:

Reporting Fee Revenues for the Maryland Department of the Environment

Special fund revenues for the Maryland Clean Air Fund within MDE increase by an estimated \$690,000 in fiscal 2026, increasing to \$746,900 by fiscal 2030 (due to increases in the fee for inflation, as provided by the bill). This estimate, which reflects revenue collected by MDE from the annual reporting fee, is based on the following information and assumptions:

- there are an estimated 8,500 covered buildings in the State, under the bill's changes;
- buildings exempted from the statewide BEPS program due to the establishment of a county BEPS program are also exempt from paying the reporting fee; anticipating that Montgomery County's BEPS program is certified by MDE under the bill, approximately 1,600 covered buildings under that county program do not pay the annual reporting fee;
- an estimated 6,900 owners of covered buildings pay the \$100 annual reporting fee each year; and
- MDE promulgates the regulations and begins collecting the annual reporting fee at the end of fiscal 2026, when covered buildings owners are required to report their calendar 2025 data (by June 1, 2026).

DLS notes that the above estimate is only due to the reporting fee; the future effects on MDE's special fund revenues from ACP fees are discussed separately below.

Budgeted Funding and Administrative Costs for the Maryland Department of the Environment

Budgeted Funding and Use of Special Funds: The fiscal 2026 budget as passed by the General Assembly includes \$1.0 million in special funds for MDE contingent on the enactment of legislation to establish a BEPS annual reporting fee, which this bill effectuates. However, as discussed above, reporting fee revenues are only estimated to generate special fund revenues of \$690,000 in fiscal 2026, while MDE's costs to implement the bill in fiscal 2026 are estimated to total \$1,033,837, as discussed below. As a result, it is assumed that general funds are needed to cover the shortfall in special fund revenues; accordingly, general fund expenditures increase by \$343,837 in fiscal 2026 only. Beginning in fiscal 2027, estimated special fund revenues exceed the estimated costs for MDE to implement the bill's requirements. *Other costs to implement BEPS that are likely not fully covered by the fee revenue generated by the bill are discussed below.*

Administrative Costs to Implement the Bill: MDE's administrative expenditures to implement the bill increase by \$1,033,837 in fiscal 2026, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost of hiring five regulatory and compliance engineers to (1) review exemption requests; (2) annually review and update forms, review and sample reported data, conduct inspections as necessary, and ensure that benchmarking reports accurately reflect the various exclusions and exemptions under the bill; and (3) generally implement the expanded requirements and BEPS provisions under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

The estimate also includes costs to hire a contractor to conduct studies and make modifications to the benchmarking tool to incorporate additional exemptions and considerations into BEPS standards. Specifically, MDE needs contractual assistance to (1) conduct a study to identify a standard deduction for steam sterilization in order to exclude the energy use and GHG emissions related to the production of steam sterilization in specified facilities; (2) customize its compliance and covered building tracking and benchmarking tools to track exempted equipment and buildings so that MDE can implement the additional special provisions, exceptions, and exemptions from BEPS requirements established under the bill; and (3) conduct the required analysis of the potential costs and benefits of BEPS policy options featuring direct emissions reduction requirements, EUI requirements, and a combination of both, as specified.

Positions	5.0
Salaries and Fringe Benefits	\$371,993
Contractual Costs	625,000
Other Operating Expenses	<u>36,844</u>
Total MDE 2026 Admin. Expenditures	\$1,033,837

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Other Ongoing Costs of the Building Energy Performance Standards Program: DLS notes that although the annual reporting fee revenues generated by the bill are anticipated to cover MDE's costs to implement *the bill's changes to BEPS* beginning in fiscal 2027, the fee revenue will *not* be sufficient to cover the additional anticipated costs MDE expects to incur related to the general implementation of BEPS as established by CSNA.

Specifically, MDE advises that – *in addition* to the positions discussed above that are needed to implement the requirements of *the bill itself* – it needs to hire five employees (four regulatory and compliance engineers and one assistant Attorney General) in fiscal 2026 to administer the BEPS program and to establish and maintain an online reporting system for covered buildings, *as required by current law*. Associated administrative expenditures are anticipated to total \$642,825 in fiscal 2026, increasing to \$789,323 by fiscal 2030. The fiscal 2026 estimate reflects salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including costs to establish an online reporting system (\$225,000). Future year estimates reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including costs to maintain the online reporting system. Therefore, because this bill establishes *new* administrative responsibilities for MDE, even with the estimated revenue anticipated to be generated from the annual reporting fees, MDE does not have sufficient available special funds to fully implement the BEPS program.

Future Effects on Alternative Compliance Pathway Fee Revenue

Pursuant to CSNA and its implementing regulations, under current law BEPS provisions, beginning in calendar 2030, owners of covered buildings may come into compliance with net direct emissions standards by paying an ACP fee for GHG emissions in excess of the standards. Under current law and the bill, ACP fee revenues are anticipated to begin accruing in fiscal 2031. The bill makes several changes that affect the amount of ACP fees collected. Notably, under the bill, (1) certain buildings are excluded from the definition of “covered building”; (2) additional special provisions, exceptions, and credits are incorporated into BEPS standards; and (3) MDE is authorized to certify county BEPS (and owners of covered buildings in a county with a certified county BEPS program will not pay ACP fees to the State). Under current law, there are an estimated 9,000 covered

buildings in the State; as noted above, based on information provided by MDE, under the bill's changes, approximately 6,900 covered buildings are subject to the State BEPS.

Although a reliable estimate of the effect of the bill's changes cannot be made at this time – in part because an estimate of ACP fee revenues anticipated under current law is not available – ACP fee revenues likely decrease beginning in fiscal 2031 under the bill.

County Impacts Related to the Establishment of County Building Energy Performance Standards

Based on available information, the only known county BEPS program in the State is the program that has already been adopted in Montgomery County. Thus, it is anticipated that Montgomery County is the only county affected by the bill's requirement for MDE to certify a county BEPS program adopted by March 1, 2025, and to waive the requirements for covered buildings in that county from the statewide program. Although the bill authorizes the county to establish ACP fees to enforce its county BEPS program, according to Montgomery County, it is not currently planning to do so. However, the county notes that the enforcement authority provided by the bill – specifically, the authority to impose a civil penalty of up to \$25,000 per day for a violation – is significantly more robust than the existing penalty provisions under the county BEPS. The county does not expect this authority to have a significant impact on county revenues but does anticipate that it could result in improved compliance with the county BEPS program.

State/Local/Small Business Effect as Owners of Covered Buildings

Owners of covered buildings could include State agencies, local governments, and small businesses. The bill makes several changes to the implementation of BEPS for owners of covered buildings, the effects of which cannot be reliably estimated at this time. The changes that likely have fiscal implications on owners of covered buildings are described below.

Reduced Compliance Costs for Some Building Owners: The bill is anticipated to reduce compliance costs for some building owners that are no longer subject to BEPS (due to the change in the definition of “covered building”) or are exempt from EUI targets.

Annual Reporting Fee: State agencies, local governments, and any small businesses that own affected covered buildings are subject to the annual reporting fee that must be established by MDE under the bill. Thus, expenditures for affected entities increase beginning in fiscal 2026 to pay the fee, which is \$100 in fiscal 2026 and increases over time due to inflation.

County Building Energy Performance Standards: As discussed above, it is anticipated that Montgomery County's BEPS program is likely the only county BEPS certified by MDE under the bill. According to MDE and Montgomery County, there are several meaningful differences between the State BEPS and the Montgomery County BEPS. Notably, the following program components differ: covered building size thresholds and definitions; BEPS exemption types and uses; the scope and magnitude of requirements imposed on covered buildings; compliance timelines; ACP options; opportunities and the basis of potential waivers for economic feasibility; and enforcement approaches.

Given the scope and complexity of the differences between the programs and the fact that the EUI portion of the State program has not been established, a reliable estimate of the bill's impact on affected building owners in Montgomery County cannot be made at this time. Even so, for affected building owners that would otherwise need to comply with *both* the State and county BEPS programs, the bill likely results in reduced complexity and potentially lower overall compliance costs.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 256 (Chair, Education, Energy, and the Environment Committee)(By Request - Departmental - Environment) - Education, Energy, and the Environment.

Information Source(s): Anne Arundel, Cecil, Frederick, Montgomery, and Prince George's counties; Baltimore City; City of Frederick; Maryland Association of Counties; Maryland Municipal League; University System of Maryland; Morgan State University; Maryland Department of the Environment; Department of General Services; Department of Housing and Community Development; Maryland Department of Labor; Maryland Department of Transportation; Maryland Energy Administration; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment - Building Energy Performance Standards - Compliance and Reporting

BILL NUMBER: HB 49

PREPARED BY: Hadley Anthony

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

To the extent that this bill has an economic impact on Maryland's small businesses, it will provide more flexibility to comply with BEPS regulations. This flexibility will lead to cost saving measures that otherwise would not be available without the alternative compliance outlined in this bill.